Supreme Court, U. S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-529

WES WISE, etc., et al.,

Petitioners,

v.

ALBERT L. LIPSCOMB, et al.,

Respondents.

PETITIONERS' BRIEF ON THE MERITS

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To the Honorable Judges of Said Court:

Petitioners respectfully submit the following brief on the merits.

CITATIONS TO OPINIONS BELOW

The opinion of the district court is reported at 399 F.Supp. 782 (A. 121). The opinion of the court of appeals is reported at 551 F.2d 1043 (A. 168).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

The judgment of the court of appeals was rendered and entered May 9, 1977 (A. 167).

Rehearing was denied July 13, 1977 (A. 178).

The mandate of the court of appeals was issued August 8, 1977 (A. 167). The mandate of the court of appeals was recalled and the judgment of that court was stayed by order of Mr. Justice Powell, dated August 30, 1977 (A. 181).

The petition for writ of certiorari was granted January 9, 1978.

STATUTES, CHARTERS, ORDINANCES AND RESOLUTIONS INVOLVED

The case involves the following provisions of statutes, charters, ordinances and resolutions:

(1) Charter of the City of Dallas, Tex. Laws 1907, ch. 71, art. III, sec. 1, at 596:

> "1. All powers conferred on the city shall, unless otherwise provided in this charter, be exercised by a mayor and four commissioners, who together shall be known and designated as the board of commissioners, all of whom shall be elected by the qualified voters of the city at large, and shall devote their entire time to the service of the city."

(2) Charter of the City of Dallas, 1931, ch. III, sec. 9:

> "Section 9. Except as otherwise provided by the Charter of the City of Dallas all powers conferred on the City shall be exercised by a City Council to be composed of nine members, nominated and elected in the manner hereinafter provided. The members of the City Council shall be elected by the qualified voters of the entire city, and they shall each be elected for a term of two years and until their respective

> successors shall have been elected and shall have qualified."

(3) Charter of the City of Dallas, 1931, as amended 1968, ch. IV, sec. 4:

> "All qualified voters of the city shall be entitled to vote for one candidate for each 'place number'."

(4) Charter of the City of Dallas, 1931, as amended 1968, ch. IV, sec. 6:

> "No person shall be eligible as a candidate for member of Council, Place Numbers 1, 2, 3, 4, 5, 6, 7 and 8, unless he is at the time a bona fide resident of District 1, 2, 3, 4, 5, 6, 7 and 8 respectively, and has resided therein for a period of at least six (6) months prior to the date of the election. He must continuously reside in said district during his term of office. A candidate for Place Numbers 9, 10 or 11 may be a resident of any portion of the City, and must continuously reside within the City during his term of office."

(5) Charter of the City of Dallas, 1931, as amended 1973, ch. II, sec. 2:

> "The enumeration of particular powers in the charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and laws of the State of Texas, it would be competent for the charter specifically to enumerate. The city shall have and exercise all the powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the Enabling Act relative thereto, passed by the Thirty-Third Legislature of the State of Texas, found in the published laws of said legislature, Regular Session, pages 307 to 317 and effective July 7, 1913, and all other laws passed by the legislature of the State of Texas, relating thereto, or which may hereafter be passed by said legislature in relation to such matters."

(6) Charter of the City of Dallas, 1931, as amended 1973, ch. XVIII, sec. 1:

"The city council shall evidence its official actions by written ordinances, resolutions or oral motion. The use of one method or the other shall not affect the validity of the action, except in those instances where one or the other is required by state law or this charter."

(7) Charter of the City of Dallas, 1931, as amended 1973, ch. XXIV, sec. 16:

"The enumeration of powers made in this charter shall never be construed to preclude, by implication or otherwise, the city from exercising the powers incident to the judgment of local self-government, nor to do any and all things not inhibited by the Constitution and laws of the state of Texas."

(8) City of Dallas Resolution Number 75-0207, sec. 1:

"Section 1. That the City Attorney be, and he is hereby directed to notify the Judge of the United States District Court for the Northern District of Texas, Dallas Division, that it is the intention of the majority of this City Council to pass an ordinance, when prepared by the City Attorney, which will adopt the present eight residential districts as single member districts, with one individual Councilman to be elected from each of the districts and living in the district, and with three individuals, including the Mayor, to be elected at-large with no residential requirements other than that the candidate live within the City limits of Dallas."

(9) Ordinance Number 14800 of the City of Dallas, sec. 2:

"Section 2. As a result of the decision of the United States District Court for the Northern District of Texas in the case of Albert L. Lipscomb, et al. vs. Wes Wise, et al., CA3-4571-E, and this Ordinance enacted pursuant thereto, only the qualified voters residing within Districts 1, 2, 3, 4, 5, 6, 7 and 8 shall be eligible to vote for a candidate for Member of Council, Place Numbers 1, 2, 3, 4, 5, 6, 7 and 8, respectively. Every qualified voter of the City shall, in addition, be eligible to vote for a candidate for Place Numbers 9, 10 and 11."

(10) Charter of the City of Dallas, 1931, as amended 1976, ch. III, sec. 1:

"Except as otherwise provided by the charter of the city, all powers conferred on the city shall be exercised by a city council to be composed of eleven (11) members, nominated and elected in the manner hereinafter provided unless otherwise provided by law. Three (3) members of the city council shall be elected by the qualified voters of the entire city, and eight (8) by the qualified voters residing in a particular district as provided in Chapter IV of this Charter and they shall each be elected for a term of two (2) years. The council members so elected shall take office on the first Monday in May succeeding the election and they shall serve until their respective successors shall have been elected and shall have qualified."

QUESTIONS PRESENTED FOR REVIEW

(1) May the court of appeals disregard the rule, established by this Court in *Reynolds v. Sims*, 377 U.S. 533 (1964), and *Burns v. Richardson*, 384 U.S. 73 (1966), that a State's freedom of choice to devise substitutes for unconstitutional apportionment plans should not be restricted beyond the clear commands of the Equal Protection Clause?

(2) May a State, in fashioning remedies to correct an unconstitutional dilution of the voting rights of one minority group, consider the voting rights of a second minority group, even though there has been no judicial determination that the voting rights of the second minority have been unconstitutionally impaired?

(3) May the court of appeals invalidate a state-initiated use of at-large voting which is based upon the need for representation of a city-wide perspective in municipal government, where there has been no finding that such at-large voting invidiously minimizes or cancels out the voting strength of any identifiable group?

THE PARTIES

Petitioners are the mayor and members of the City Council of the City of Dallas, Texas.

Respondents are a class composed of the Negro citizens of the City of Dallas, who were plaintiffs in the district court, and a group of Mexican-American intervenors who were denied class certification in the district court (A. 26-28).

STATEMENT OF THE CASE

The legislative powers of the City of Dallas, a home-rule city, are exercised by an eleven-member city council.

At the time this legislation was begun all eleven members were elected at-large from the entire city. Candidates for Places 1-8 were required to be residents of the districts which they sought to represent, and were required to remain residents of those districts during their terms of office. Candidates for Places 9-11 were not required to reside in any district. Charter of the City of Dallas, 1931, as amended 1968, ch. IV, sec. 4, 6 (above, at 3); *Lipscomb v. Wise,* 399 F.Supp. 782, 785 (N.D. Tex. 1975) (A. 124).

At-large elections have been used continuously in Dallas since 1907, first under special charter granted by the Texas legislature, and later under the City's home rule Charter. Charter of the City of Dallas, Tex. Laws 1907, ch. 71, art. III, sec. 1, at 596 (A. 124); Charter of the City of Dallas, 1931, ch. III, sec. 9 (A. 188); Charter of the City of Dallas, 1931, as amended 1968, ch. IV, sec. 4 (above, at 3). *Lipscomb v. Wise,* supra, 399 F.Supp. at 785 (A. 124).

Negro and Mexican-American voters filed suit in the United States District Court for the Northern District of Texas, seeking a determination that the at-large election of all city council members denied them equal protection. Jurisdiction of the district court was based upon 28 U.S.C. Section 1343 (3), (4).

The Mexican-American plaintiffs were dismissed from the suit (A. 122), and the district court rendered judgment that the at-large election of all members of the council unconstitutionally diluted the voting strength of Negro voters. The district court then "gave the City of Dallas an opportunity to perform its duty to enact a constitutionally acceptable plan", *Lipscomb v. Wise,* supra, 399 F.Supp. at 785 (A. 136), and retained jurisdiction pending the adoption of a plan by the City (A. 123).

The city council reapportioned itself, adopting a plan which maintains Places 9, 10 and 11 in their previous form, elected at-large, and without regard to residency within any district of the city. Places 1-8 were converted into single-member districts. *Lipscomb v. Wise,* 551 F.2d 1043, 1045-1046 (5th Cir. 1977) (A. 170); *Lipscomb v. Wise,* supra, 399 F.Supp. at 792 (A. 135); City of Dallas Resolution 75-0207, sec. 1 (A. 188); City of Dallas Ordinance No. 14800, sec. 2 (A. 189).

The plan adopted by the council was reviewed and found constitutional by the district court. *Lipscomb v. Wise,* supra, 399 F.Supp., at 792 (A. 136).

The district court found that the combination of single-member and at-large positions would afford Mexican-Americans a "greater opportunity for participating in the political process." *Lipscomb v. Wise,* supra, 399 F.Supp., at 792 (A. 140).

The district court further found that the "need for a city-wide view on the part of the council" also forms a valid basis for partial at-large representation, citing the advantages of having a non-sectional viewpoint expressed in zoning matters, city planning and the budget. *Lipscomb v. Wise,* supra, 399 F.Supp., at 794 (A. 141).

The Court of Appeals for the Fifth Circuit reversed and

remanded, citing this Court's decision in *East Carroll Parish School Bd. v. Marshall,* 424 U.S. 636 (1976), holding that there was no "special circumstance" which would permit the at-large election of three of the eight council members, and prohibiting the at-large election of any council member other than the mayor. *Lipscomb v. Wise,* supra, 551 F.2d, at 1048 (A. 173). The court of appeals did not purport to determine the constitutionality of the plan enacted by the city council.

All parties petitioned for rehearing, and the court of appeals denied those petitions July 13, 1977 (A. 178).

The court of appeals denied petitioners' motion for stay of the mandate of that court (A. 180).

The mandate of the court of appeals was recalled and the judgment of that court stayed by order of Mr. Justice Powell, dated August 30, 1977 (A. 181).

The petition for writ of certiorari was granted January 9, 1978.

SUMMARY OF ARGUMENT

1. This Court has established a standard of review for reapportionment plans initiated by State agencies, and has established a different, and more restrictive, standard of review for reapportionment plans devised and ordered by federal courts in the wake of a State's failure to adopt a constitutionally acceptable reapportionment. The court of appeals has confused those standards, and has erroneously subjected the City's reapportionment plan to the more stringent standards applicable only to a plan initiated by federal court.

2. This Court has not held that the use of racial criteria is limited to the elimination of past discrimination, and the decision of the court of appeals in so holding appears to be contrary to decisions of this Court.

3. The validity of at-large voting based upon the need for a community-wide perspective has been recognized by this Court. The court of appeals has disregarded those decisions, and has disregarded the district court's pertinent fact findings without expressly holding them clearly erroneous.

ARGUMENT

1. The court of appeals has erred by limiting, beyond the requirements of the Equal Protection Clause, a home rule city's freedom to devise a substitute for an apportionment plan found unconstitutional.

The City's reapportionment plan retains the use of at-large voting in the election of three of its eleven members. The district court held City's plan constitutional and approved its implementation. The court of appeals ruled that this Court's decision in *East Carroll Parish School Board v. Marshall,* 424 U.S. 636 (1976) requires the exclusive use of single-member districts in the absence of special circumstances and, finding no evidence of special circumstances, reversed. The City contends that its plan is subject to review only on constitutional grounds, and that evidence of special circumstances is not required to justify the partial use of at-large voting.

Apportionment of State legislative bodies is an essentially political process of the sovereign States, *Gaffney v. Cummings,* 412 U.S. 735, 754 (1973), dealing with fundamental choices about the nature of representation. Id., 412 U.S., at 749. That process is one which is intended to have substantial political consequences, Id., 412 U.S., at 753, the very essence of which is to produce a politically fair result rather than one based simply on population. It is a process in which those who reapportion seek, "through compromise or otherwise, to achieve the political or other ends of the State, its constituents, and its office holders." Id., 412 U.S., at 753-754.

The courts have disclaimed any distinctive mandate to compromise conflicting State apportionment policies in the people's name, and have acknowledged that they lack the political authoritativeness which legislative bodies can bring to the apportionment task. *Conner v. Finch,* ____U.S.____, 52 L.Ed.2d 465, 474 (1977).

Reapportionment therefore is primarily the responsibility of the State through its legislature or other agency chosen by the State to perform that function. See *Chapman v. Meier,* supra, 420 U.S., at 27; *Gaffney v. Cummings,* supra, 412 U.S., at 751. Cf. *White v. Weiser,* 412 U.S. 783, 795 (1973), and cases there cited.

When a legislative apportionment plan is held unconstitutional the State should be given an opportunity to devise its own reapportionment plan to eliminate constitutional deficiencies. *Reynolds v. Sims,* 377 U.S. 533, 586 (1964), *Burns v. Richardson,* 384 U.S. 73, 85 (1966). See also *Gaffney v. Cummings,* 412 U.S. 735, 750-751 (1973) and *Dusch v. Davis,* 387 U.S. 112, 114 (1967). If the State timely adopts a remedial apportionment plan, it is subject to review only to the extent that it must meet the "clear commands of the Equal Protection Clause." *Burns v. Richardson,* supra, 384 U.S., at 85, cf. *Dusch v. Davis,* supra, 387 U.S., at 117. If the State fails to adopt its own remedial plan within a reasonable time, or if its plan violates the Equal Protection Clause, the district court is authorized to devise and order implementation of a plan. *Whitcomb v. Chavis,* 403 U.S. 124, 162 (1971). Such court-ordered reapportionment plans must not only satisfy the requirements of the Equal Protection Clause but must also conform to the federal common law of voting rights remedies, which forbids the court-initiated use of at-large voting except under unusual circumstances. *East Carroll Parish School Board v. Marshall,* 424 U.S. 636, 639-640 (1976). This Court has

never held that State-initiated reapportionment plans are subject to the closer scrutiny by which court-ordered plans must be tested, but instead has declared that the standards for evaluating the use of at-large voting in remedial apportionment plans differ depending on whether the use of at-large voting is initiated by a federal court or by a State agency. *Chapman v. Meier,* 420 U.S. 1, 18 (1975). See also *Connor v. Finch,* ____U.S.____, 97 S.Ct. 1828, 1833 (1977).

The Court of Appeals for the Fifth Circuit in this case recognized that the use of at-large voting stems from "Dallas' longstanding public policy in favor of at-large voting." *Lipscomb v. Wise,* supra, 551 F.2d at 1046 (A. 172). See also Charter of the City of Dallas, Tex. Laws 1907, ch. 71, art. III, sec. 1, at 596 (A. 188); Charter of the City of Dallas, 1931, ch. III, sec. 9 (A. 188); Charter of the City of Dallas, 1931, as amended 1968, ch. IV, sec. 4 (above, at 3). Cf. *Kilgarlin v. Hill,* 386 U.S. 120, 123-124 (1967). The court of appeals also found that the plan approved by the district court was "enacted as a city ordinance following the [district] court's decision that the prior system was unconstitutional." *Lipscomb v Wise,* supra, 551 F.2d, at 1045 (A. 170). The court of appeals nevertheless stated that the council's reapportionment plan could be approved only if "the election plan proposed and formally adopted by the city council is (1) constitutional and (2) otherwise in accordance with the federal common law of voting rights remedies". *Lipscomb v. Wise,* supra, 551 F.2d, at 1046 (A. 171). The court of appeals did not purport to determine the constitutionality of the City's reapportionment plan, but held the plan contrary to federal common law and therefore invalid because there appeared to be no special circumstances to justify at-large voting. *Lipscomb v. Wise,* supra, 551 F.2d, at 1048 (A. 173).

The use of at-large voting in the City of Dallas was not initiated or imposed upon the City by a federal court, as in *Chapman v.*

Meier, supra, 420 U.S. at 18, 19, but instead was initiated by the Texas legislature more than sixty years before this litigation began. Charter of the City of Dallas, Tex. Laws 1907, ch. 71, art. III, sec. 1, at 596 (A. 188). *Lipscomb v. Wise,* supra, 399 F.Supp., at 785 (A. 147). The use of at-large elections was continued by the City upon its adoption of a home-rule charter in 1931, Charter of the City of Dallas, 1931 (A. 188), and has been in effect without interruption since 1907. Tex.Laws 1907, ch. 71, art. III, sec. 1 (A. 188); Charter of the City of Dallas, 1931, (A. 188); Charter of the City of Dallas, 1931, as amended 1973 (A. 188); Charter of the City of Dallas, 1931, as amended 1976 (above, at 5). The plan itself was not devised by the district court, but was created as a legislative act of the City Council of the City of Dallas.[1]

[1] In Texas a home rule city such as the City of Dallas derives its power not from the Legislature, but from the Home Rule Amendment, Article XI, Section 5 of the Texas Constitution, adopted in 1912. *Lower Colorado River Authority v. City of San Marcos,* 523 S.W. 2d 641, 642 (Tex.Sup.Ct. 1975). Home rule cities in Texas have been held since that time to have "full power of self-government, that is, full authority to do anything the Legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the Legislature not for grants of power to such cities but only for limitations on their powers." *Forwood v. City of Taylor,* 147 Tex. 161, 214 S.W.2d 282, 286 (Tex.Sup.Ct. 1948).

Chapter II, sec. 2 of the Charter of the City of Dallas provides that: "The enumeration of particular powers in the charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated therein, implied thereby or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and laws of the State of Texas, it would be competent for the charter specifically to enumerate. The city shall have and exercise all the powers conferred upon cities by what is known as the Home Rule Amendment to the Constitution of the State of Texas and the Enabling Act relative thereto, passed by the Thirty-Third Legislature of the State of Texas, found in the published laws of said legislature, Regular Session, pages 307 to 317 and effective July 7, 1913, and all other laws passed by the legislature of the State of Texas, relating thereto, or which may hereafter be passed by said legislature in relation to such matters."

Chapter XXIV, sec. 16 of the Charter of the City of Dallas provides that: "The enumeration of powers made in this charter shall never be construed to preclude, by implication or otherwise, the city from exercising the powers incident to the judgment of local self-government, nor to do any and all things not inhibited by the Constitution and laws of the State of Texas."

The City's present apportionment plan was devised and adopted by the governing body of a State political subdivision. The use of at-large representation as one aspect of that plan is a device which is state-initiated, having first been used in Dallas at the direction of the Texas legislature, more than seventy years ago. At-large voting was adopted by the City in its first home rule charter, has been used without interruption, and continues to be used by the City.

The use of at-large voting by the City of Dallas clearly is "state-initiated" within the meaning of *Chapman v. Meier,* supra, 420 U.S. at 18, and qualifies as "established State policy" entitled to judicial respect and deference. Id., 420 U.S., at 14, 19. The reapportionment plan enacted by the city council is not a court-ordered reapportionment scheme reviewable under the "special circumstances" test applied by the court of appeals, see *Chapman v. Meier,* supra, 420 U.S., at 15, 18-19, and the plan is reviewable only to the extent that it must conform to the "clear commands of the Equal Protection Clause." *Burns v. Richardson,* supra, 384 U.S., at 85; cf. *Dusch v. Davis,* supra, 387 U.S., at 117. Neither the court of appeals nor the district court has held that the City's use of at-large voting violates the Equal Protection Clause, and the court of appeals erred in reversing the judgment of the district court.

2. The court of appeals has held, contrary to decisions of this Court, that the effect of the City's reapportionment plan on Mexican-American voters have been unconstitutionally impaired.

(1) Chapter XVIII, sec. 1 of the Charter of the City of Dallas provides that: "The city council shall evidence its official actions by written ordinances, resolutions or oral motion. The use of one method or the other shall not affect the validity of the action, except in those instances where one or the other is required by state law or this charter."

There is no provision under Texas law for reapportionment of home rule cities by the State legislature or other State-wide agency.

The record suggests no statutory or constitutional limitation of the authority of the City of Dallas to adopt a municipal election plan, either by resolution, by ordinance or by charter amendment, subsequent to the judicial invalidation of the prior charter provision.

The district court found the city council's reapportionment plan constitutional, declared that Mexican-Americans in Dallas "do not suffer from present dilution of their voting strength", *Lipscomb v. Wise,* supra, 399 F.Supp., at 793 (A. 139), and made extensive findings of fact which support its conclusion that the incorporation of some at-large voting into the plan would enhance the opportunity of Mexican-American voters to participate in local electoral politics. The district court found that "here we deal with two separate minority groups, each with a significant interest. This interplay of distinct minority interests is markedly similar to the 'singular combination of unique factors' which justified a multi-member apportionment plan in *Mahan v. Howell,* 410 U.S. 315, 333 (1973)." *Lipscomb v. Wise,* supra, 399 F.Supp., at 793-794 (A. 141).

The court of appeals applied the "special circumstances" rule of *East Carroll Parish School Board v. Marshall,* supra, 424 U.S. 636, and held that the interests of Mexican-American voters did not amount to a "special circumstance" because the district court had not found any unconstitutional impairment of Mexican-American voting rights. *Lipscomb v. Wise,* supra, 551 F.2d, at 1047 (A. 174).

The City contends that the special circumstances rule of *East Carroll* is not applicable to its reapportionment plan, for the reasons stated under part I, above, at 9-13. If *East Carroll* is applicable, the City contends that the constitutionality of the former system with respect to Mexican-Americans is irrelevant to a determination of special circumstances.

This Court recently upheld a reapportionment based upon racial criteria even though that reapportionment was not devised as a remedy for past unconstitutional apportionments, with three members of the Court expressing the view that the use of racial criteria is not confined to eliminating the effects of past

discriminatory districting or apportionment. *United Jewish Organizations v. Carey,* ___ U.S. ___, 97 S.Ct. 996, 1007, 51 L.Ed.2d 229, 243 (1977). The Court also has said, in *Gaffney v. Cummings,* supra, 412 U.S., at 752-754, ". . . neither we nor the district courts have a constitutional warrant to invalidate a State plan, otherwise within tolerable population limits, because it undertakes, not to minimize or eliminate the political strength of any group or party, but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the state." Id., 412 U.S., at 754.

The conclusion of the court of appeals, that the voting rights of Mexican-Americans cannot be considered absent a finding of unconstitutional dilution, appears to be contrary to this Court's decision in *United Jewish Organizations v. Carey,* supra, and no decision is found which expressly supports the decision of the court of appeals.

The City further contends that multi-member districts and at-large elections do not, per se, violate the Equal Protection Clause, *Whitcomb v. Chavis,* supra, 403 U.S., at 142 (1971), and that the incorporation of at-large voting in a State-initiated remedial apportionment plan does not violate the "clear commands of the Equal Protection Clause" unless the reapportionment plan, as a whole, invidiously cancels out or minimizes the voting strength of racial groups. *White v. Regester,* 412 U.S. 755, 765-766 (1973). A successful equal protection challenge moreover must be based on findings in a particular case that a plan in fact operates to dilute the voting strength of an identifiable element of the voting population. *Dallas County v. Reese,* 421 U.S. 477, 480 (1975), *Whitcomb v. Chavis,* supra, 403 U.S., at 144.

There is no finding in this case that the partial use of at-large voting dilutes the voting strength of any identifiable element of

the voting population. The district court found exactly the opposite. The court of appeals has improperly relied on a theoretical presumption rather than a factual conclusion. *Dallas County v. Reese,* supra, 421 U.S., at 480-481.

This Court has not held that the use of at-large voting to further the voting rights of any group must be predicated upon a finding of an unconstitutional dilution of that group's voting strength. This Court has not held that special circumstances justifying the use of at-large voting must be predicated upon a finding of prior unconstitutional apportionment; the court of appeals has erred in so holding, and its decision should be reversed.

3. The court of appeals has invalidated the City's use of at-large voting based upon the need for representation of a city-wide perspective in municipal government, even though neither the district court nor the court of appeals found that such use of at-large voting would minimize or cancel out the voting strength of any identifiable segment of the voting population.

The district court found that the city council's constitutionally permissible preference for partial at-large representation was based on the council's responsibility for policies which affect the city as a whole, as well as those which affect geographic or demographic segments of the city, and that a non-sectional viewpoint is desirable in matters such as zoning, formulation of the budget and urban land use planning. *Lipscomb v. Wise,* supra, 399 F.Supp., at 794 (A. 141). The district court also found that the plaintiffs had admitted the need for at least one at-large member of the council, and that the issue of city-wide representation was merely a question of degree. *Lipscomb v. Wise,* supra, 399 F.Supp., at 794-795 (A.141-142).

The court of appeals disregarded those findings and did not

purport to determine the validity of the City's interest in representation of a city-wide perspective on the council. The court of appeals nevertheless declared the council's plan invalid, although there are no findings of fact on which to base that determination. See *Dallas County v. Reese,* supra, 421 U.S., at 480.

The City contends that the special circumstances rule of *East Carroll* is not applicable to its reapportionment plan, for the reasons stated under part 1, above, at 9-13. If *East Carroll* is applicable, the City contends that the public interest in city-wide representation, as found by the district court, constitutes a valid special circumstance justifying some at-large representation.

This Court has approved local government apportionment plans which utilize at-large representation, *Dusch v. Davis,* 387 U.S. 112 (1967), cf. *Dallas County v. Reese,* supra, and *Fortson v. Dorsey,* 379 U.S. 433, 439 (1965), and has indicated that representation of city-wide views may form a rational basis for the use of multi-member districts. *Chapman v. Meier,* supra, 420 U.S., at 20 n. 14; *Dallas County v. Reese,* supra, 421 U.S., at 479-780; *Dusch v. Davis,* supra, 387 U.S., at 116-117; *Fortson v. Dorsey,* supra, 379 U.S., at 438.

In this case the findings of the district court fully sustain the use of some at-large voting, and the court of appeals has not declared those findings clearly erroneous. There are no findings to support a conclusion that the partial use of at-large voting dilutes, minimizes or cancels out the votes of any minority group, and the court of appeals has erred in holding the City's plan unlawful.

CONCLUSION

Petitioners pray that the judgment of the court of appeals be reversed and that the judgment of the district court be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of the foregoing brief were served by mail on James A. Johnston, Esq., Sylvia M. Demarest, Esq., Edw. B. Cloutman, Esq., Walter L. Irvin, Esq. and George Solares, Esq., Attorneys for Respondents, on the ____ day of February, 1978.

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